



The Florida Senate

Interim Project Report 2000-06

December 1999

Committee on Budget

Senator Locke Burt, Chairman

REVIEW OF CHAPTER 216, FLORIDA STATUTES

SUMMARY

Chapter 216, Florida Statutes, governs the planning and budgeting requirements and processes for the state. With many modifications and additions enacted since 1969, the chapter has become somewhat disjointed and, in some cases, outdated relative to constitutional revisions and other changing circumstances.

The objective of this project was to conduct a comprehensive review of the chapter and to develop proposed legislation that will better organize the sequence of budgeting and management provisions, modify provisions that are outdated, and eliminate any inadvertent conflicts among the older and newer provisions.

With the assistance of 43 staff from the Legislative and Executive Branches, numerous proposals for changes and reorganizations of sections within Chapter 216 were reviewed and refined.

This report was written to describe the major Chapter 216 changes which will be incorporated in a proposed bill crafted by Senate staff. A separate more detailed staff analysis will also be prepared pursuant to Senate rules to accompany the proposed bill.

BACKGROUND

Chapter 216, Florida Statutes, was created in 1969 (Chapter 69-106, Laws of Florida) concurrent with a major reorganization of Florida government. It was originally crafted as a way to manage the new agency structures of divisions and bureaus, necessitated by the constitutional limitation on the number of state agencies. Piecemeal modifications have been enacted in at least 18 of the 30 years since Chapter 216 was created. As a result, the chapter now reflects a somewhat disjointed mixture of financial management and budgeting provisions, including Consensus Estimating Conference mandates and various incremental budgeting procedures along with more recent Performance Based Program

Budgeting parameters and exceptions to the original management controls.

The objective of this project was to develop proposed legislation to better organize the sequence of budgeting and management provisions, modify provisions which are outdated, and eliminate any inadvertent conflicts among the older and newer provisions.

METHODOLOGY

This project was conducted jointly with the staff of the House of Representatives and the Governor's Office. Meetings with project participants in May and June focused on refining the scope and objectives of the study, and establishing broad time frames and work processes for the major tasks required. Throughout the month of July, project participants reviewed the chapter to identify potential restructuring opportunities, sections needing revisions/updates, and sections that should be moved to other chapters. At the same time, participants developed a proposed subject area structure for classifying the sections of the chapter. Twelve workgroups were established to review each part of that structure in detail. Additional staff from the House, Senate, Comptroller's Office, Legislative Division of Economic and Demographic Research, Office of Program Policy Analysis and Government Accountability, and Governor's Office were enlisted to participate in the workgroups. A total of 43 participants were assigned to the 12 workgroups. During August each workgroup conducted an in-depth review of the sections relating to their assigned subject area, and developed recommendations for the joint participants to consider as a whole. A series of meetings with all 43 participants was held during September and October to formulate consensus staff proposals for legislative review. After all of the workgroups' proposals were considered by the larger group, the House, Senate, and Governor's Office principal participants began working separately to draft their recommended changes to the chapter.

This report was written to describe the major Chapter 216 changes which will be incorporated in a proposed bill crafted by Senate staff. A more detailed staff analysis will also be prepared pursuant to Senate rules to accompany the proposed bill.

FINDINGS

The major findings of the workgroups involved in this project are discussed below. However, since many of the proposed changes are either highly technical or simple modifications of outdated/expired provisions, this report will not attempt to detail every proposed change. The actual proposed bill and the related detailed staff analysis will provide that level of information. The findings section of this report addresses the significant policy changes that are proposed.

THE DEFINITIONS IN SECTION 216.011 SHOULD BE UPDATED TO REFLECT CURRENT PRACTICE, AND SOME DEFINITIONS SHOULD BE MOVED TO THE SECTION WHEREIN THE TERM IS USED

Along with some proposed minor clarifying changes in the definitions, several other changes are proposed to reflect current practice. One such proposal is to change the definition of “Grants and aids” to include contributions to “non-state entities” instead of “non-profit organizations.” In practice, many Grant and Aid appropriation categories include specific allocations to both non-profit and for-profit entities for specified contractual purposes. Deletion of several definitions is proposed because the terms are no longer used in the chapter. Several other definitions are used only in one place in the chapter, and it is proposed that these be moved to the respective section wherein they are used.

PERFORMANCE BASED PROGRAM BUDGETING PROVISIONS NEED TO BE UPDATED AND BETTER ORGANIZED WITHIN THE CHAPTER.

During the past few years, Performance Based Program Budgeting (PB²) has been phased in for state agencies according to a schedule established in s. 216.0172, Florida Statutes (F.S.). A number of sections in the chapter govern the budgeting process under PB², while other sections govern the budgeting process being replaced by PB². Since all state agencies will be required to follow the PB² provisions during the budget cycle for the 2001-2002 fiscal year (that budgeting cycle begins in the summer of 2000), it is now possible to eliminate the old provisions as they will no longer apply to any agencies. Some time-limited PB² provisions, such as the schedule of implementation in s. 216.0172, F.S., can be eliminated as well, since they were designed only to

specify how the transition would occur and will no longer govern the budgeting process.

When sections were originally drafted to govern PB² transitions, a number of budgeting requirements that were still applicable under PB² but were contained in older sections were repeated in the PB² sections. It is possible to combine both older provisions and PB² provisions into one comprehensive structure that will be easier to understand, since two parallel budgeting processes will no longer exist as of the 2001-2002 budgeting cycle.

In addition to updating and reorganizing the PB² provisions, they can also be simplified because the budget instructions have addressed and will continue to address many of the detailed requirements for budget documentation that are delineated in statute. For example, the details for information on trust fund schedules need not be specified in statute because they are always detailed in the budget instructions agencies are required by law to follow.

THE ROLE OF THE TECHNOLOGY REVIEW WORKGROUP COULD BE STRENGTHENED TO PROVIDE BETTER ASSISTANCE TO THE GOVERNOR AND THE LEGISLATURE

The ever-increasing complexity of information technology issues makes the need for a centralized unit with appropriate expertise to review agency technology issues critical. Changes to s. 216.0446 and s. 216.181, F.S. can be made to require agencies to receive approval from the Technology Review Workgroup, housed in the Governor’s Office, for budget amendments involving technology issues.

THE PROCESS FOR BUDGET REQUESTS SUBMITTED BY LEGISLATORS CAN BE CLARIFIED AND BETTER DISTINGUISHED FROM REQUESTS SUBMITTED BY AGENCIES

Section 216.052(3), F.S., currently provides that certain funding requests which have not been formally recommended by a state agency or other procedures established in law, or which promote only a local interest may be considered by the Legislature within the appropriations process. Clarification is needed to show that agency budget requests and budget issues raised by individual legislators have separate process requirements. In addition, the process requirements for budget issues initiated by legislators should be modified to reflect the current practices of both the House and Senate, and to

engage the Governor in addressing legislators' initiatives. (See proposed changes to s. 216.052, F.S.)

SEVERAL SECTIONS RELATING TO FINANCIAL CONTROLS AND REPORTING DUPLICATE PROVISIONS IN OTHER STATUTES, AND ARE NOT NEEDED IN CHAPTER 216.

Sections 216.091 (Statements by Comptroller) and 216.111 (Financial statements and schedules and other reports, submission by governmental entities), F.S., are provisions not needed in Chapter 216 because they are addressed by other statutes or constitutional requirements. In addition, two sections of Chapter 216 which relate to financial controls would be more appropriately housed in Chapter 215, so the proposed bill will show them moved to that chapter. These are sections 216.331 (Disbursement of state moneys) and 216.3505 (Refinancing of bonds).

PROVISIONS ESTABLISHING CONSENSUS ESTIMATING CONFERENCES NEED TO BE UPDATED TO REFLECT CURRENT PRACTICE, AND ESTIMATING CONFERENCE PROVISIONS IN OTHER CHAPTERS SHOULD BE CONSOLIDATED IN CHAPTER 216. The work group reviewing consensus estimating conference provisions found that the estimating conference process has been operating smoothly and required little change. As a precaution against future misunderstanding, the term "consensus" should be defined and the status of the official estimates in the absence of a consensus should be clarified. The remaining changes consist of consolidating all of the revenue estimating conferences in Chapter 216 (the Florida Retirement System Actuarial Assumption Conference) and discontinuing a conference that has not met since 1985, namely, the Transportation Estimating Conference (s. 216.136(7), F.S.) which is tasked with estimating transportation costs and expenditures. (Transportation *revenues* are still estimated by the Revenue Estimating Conference.)

PROVISIONS GOVERNING CLARIFICATION OF LEGISLATIVE INTENT NEED TO BE MODIFIED.

Two changes in s. 216.177, F.S. are proposed. Section 216.177, F.S., requires the chairs of the legislative appropriation committees to jointly transmit a statement of intent to the Governor 10 days before the end of the period allowed by law for veto consideration. When the Legislature delivers an appropriations act to the Governor at least seven days before the end of the legislative session, the time allowed by the constitution for the Governor to veto portions of the act is reduced to a seven day period instead of 15 days. (This has

occurred only once in recent times -- during the 1998 session.) The proposed bill will modify the statement of intent requirement to account for the times when the Governor has only 7 days to consider vetoes. Since the Legislature will still be in session in this instance, it is proposed that no statement of intent be required.

The second proposed change relates to the Legislatures's authority to object to spending plans proposed by the Executive Branch or Judicial Branch. The proposal would provide that the Legislature may formally object to any Executive Branch or Judicial Branch action affecting the expenditure of appropriated funds which is deemed to violate Legislative intent, whether or not the action requires a budget amendment for implementation.

SALARY RATE PROVISIONS NEED TO BE STRENGTHENED TO PROVIDE BETTER CONTROL OVER CHANGES WHICH INCREASE FUTURE OPERATING COSTS.

Currently the provisions of s. 216.181, F.S., allow the Executive Branch or Judicial Branch to approve adjustments to salary rate for state personnel if deemed to be necessary and in the best interest of the state. Situations where this has occurred include upgrading positions to reduce excessive turnover of employees, and increasing salary rate for positions involved in significant reorganizations. When such increases are granted during the year, the agency involved must fund the increased salaries within existing budget authority. However, even though an agency may have funds to pay for the phased-in salary upgrades during the year, the next year's budget calculations must include funds to pay the full annual cost of the upgrades. For example, if an agency receives approval of increased salary rate for \$100,000 annually and funds that increase with existing budget for only the last 6 months of the year, the next year's budget calculations for continuation of current positions must provide the remainder of what is needed for those upgrade costs. Hence, approval of "deemed necessary" salary rate increases can create a required budget increase in the next fiscal period. The proposed change would be to force agencies to reduce salary rate in one portion of their budget in order to increase it in another portion for any positions funded from General Revenue Fund. This net-zero-impact proposal would eliminate future year increases in General Revenue Fund salaries without Legislative approval.

NONOPERATING BUDGET AUTHORITY SHOULD BE RESTRICTED TO ONLY SPECIFIED PURPOSES OR SUBJECTED TO MORE RIGOROUS REVIEW BEFORE APPROVAL.

Nonoperating budget authority allows agencies to transfer or otherwise disburse funds without a specific appropriation. For example, if a statute requires a portion of a trust funds receipts to be used for a certain purpose by another agency (e.g., distribution of Florida Forever bond proceeds pursuant to s. 259.105, F.S.), the agency receiving the receipts usually transfers those funds to the other agency without having an appropriation for that disbursement. The agency to which the funds are transferred must have an appropriation to spend the funds, but the agency from which the funds are transferred only needs nonoperating budget authority to make the disbursement. The nonoperating budget authority is not reflected in the appropriations act.

A multitude of nonoperating budget authorizations exist currently. There are some inconsistencies in the use of nonoperating budget authority. For example, the fingerprinting fees paid to the Florida Department of Law Enforcement are sometimes disbursed as nonoperating budget by some agencies, and disbursed using appropriated Expenses budget by other agencies. Transfers of various trust funds to an agency's Administrative Trust Fund are sometimes accomplished with nonoperating budget, and sometimes with appropriated budget.

In addition, there are numerous instances, particularly within the Department of Revenue, where funds transferred to local governments as required by law are shown in the appropriations act when they really do not need such authorization due to the unambiguous authorization contained in statute. Examples include the Local Government Half-cent Sales Tax Clearing Trust Fund distribution (\$1.2 billion) and the Fifth and Sixth Cent SBA/County Motor Fuel Gas Tax distribution (\$175.9 million). These appropriated amounts are not true state expenditures, but they are included in the total state budget and considered "state spending." If they were disbursed with nonoperating budget authority, the total state spending picture would be more accurately reflected in the state's annual appropriations act.

The proposed change would provide standing authorization for nonoperating budget authority only for certain purposes: refunds, payments to the U.S. Treasury, payments of the service charge to General Revenue Fund, and transfers of funds specifically required by law. Any other nonoperating budget

authority would not be granted unless reviewed by the Governor's office in consultation with the Legislature and deemed necessary and in the best interest of the State.

RESTRICTIONS ON THE USE OF FUNDS ARISING FROM COURT SETTLEMENTS NEED TO BE EXPANDED.

In several instances over the past ten years court settlements negotiated by state officials have required the private defendant in the case to remit funds for specified purposes, which happened to involve either operational or fixed capital expenditures benefitting a state entity. Some observers have perceived this as appropriating funds, which under the constitution is a power reserved for the Legislature. To allow for proper scrutiny of these situations, a new provision is recommended for inclusion in Chapter 216 which clarifies that these funds are to be deposited into the appropriate fund in the state treasury and made available for appropriation by the Legislature.

THE DOLLAR THRESHOLD FOR WHEN A PROJECTED DEFICIT IN THE GENERAL REVENUE FUND MUST BE ADDRESSED BY THE LEGISLATURE SHOULD BE REVISED.

Currently, section 216.221(6), F.S., provides that any current fiscal year projected deficit in the General Revenue Fund in excess of \$300 million shall be resolved by the Legislature. In order for this threshold to grow appropriately with future increases in the budget, it is recommended that the threshold be changed to 1.5 percent of General Revenue appropriations. For the 1999-2000 fiscal year, with a General Revenue (GR) appropriation of \$18.6 billion, the threshold, if set at 1.5 percent, would be about \$280 million. As of the upcoming 2000-2001 fiscal year, it is expected that 1.5 percent of the GR appropriation will be near or over \$300 million, and in future years it should be in excess of \$300 million.

DOLLAR THRESHOLDS FOR BUDGET AMENDMENTS THAT REQUIRE ADMINISTRATION COMMISSION APPROVAL SHOULD BE INCREASED

Section 216.292, F.S., provides that agencies may transfer funds between appropriation categories or budget entities via a budget amendment, if consistent with legislative intent, but not in excess of 5 percent of the original budget or \$25,000, whichever is greater. Amendments exceeding the thresholds must be approved by the Administration Commission. If the 5 percent

threshold is maintained, but the \$25,000 threshold is raised to \$150,000, it is estimated that more than one-third of the amendments currently approved by the Administration Commission could be approved with only legislative consultation, as are other amendments that are under the current thresholds. This would reduce unnecessary workload without sacrificing appropriate oversight.

RECOMMENDATIONS

Along with the policy changes cited above in the Findings section, the complete and detailed recommendations for modifying Chapter 216 will be displayed in the proposed committee bill to be drafted separately.

COMMITTEE(S) INVOLVED IN REPORT (*Contact first committee for more information.*)

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Committee on Fiscal Policy

Committee on Fiscal Resources

Committee on Governmental Oversight and Productivity

MEMBER OVERSIGHT

Senators Burt and Webster